

H. R. 685.

[No. Report.]

IN THE HOUSE OF REPRESENTATIVES.

DECEMBER 20, 1848.

Read twice, and committed to the Committee of the Whole House on the state of the Union.

Mr. CALEB B. SMITH, from the Committee on Territories, reported the following bill :

A BILL

To establish the territorial government of Upper California.

1 *Be it enacted by the Senate and House of Repre-*
2 *sentatives of the United States of America in Congress*
3 *assembled,* That from and after the first day of April, in
4 the year of our Lord eighteen hundred and forty-nine, all
5 that part of the territory of the United States, known and de-
6 signated as Upper California, shall be organized into and
7 constitute a temporary government by the name of the terri-
8 tory of Upper California: *Provided,* That nothing in this act
9 contained shall be construed to impair the rights of person or
10 property now pertaining to the Indians in said territory, so
11 long as such rights shall remain unextinguished by treaty

12 between the United States and such Indians, or to affect
13 the authority of the government of the United States to
14 make any regulation respecting such Indians, their lands,
15 property, or other rights, by treaty, law, or otherwise,
16 which it would have been competent to the government to
17 make, if this act had never passed: *Provided, further,*
18 That nothing in this act contained shall be construed to
19 prohibit the government of the United States from dividing
20 said territory into two or more territories, in such manner
21 and at such times as Congress shall deem convenient and
22 proper, or from attaching any portion of said territory to
23 any other State or territory of the United States.

1 SEC. 2. *And be it further enacted,* That the execu-
2 tive power and authority in and over said territory of
3 Upper California shall be vested in a governor, who shall
4 hold his office for four years, and until his successor shall
5 be appointed and qualified, unless sooner removed by the
6 President of the United States. The governor shall re-
7 side within said territory, shall be commander-in-chief of
8 the militia thereof, shall perform the duties and receive the
9 emoluments of superintendent of Indian affairs. He may
10 grant pardons and respites for offences against the laws
11 of said territory, and reprieves for offences against the
12 laws of the United States, until the decision of the Presi-
13 dent can be made known thereon. He shall commission

14 all officers who shall be appointed to office under the laws
15 of the territory, where by law such commissions shall be
16 required, and shall take care that the laws be faithfully
17 executed.

1 SEC. 3. *And be it further enacted*, That there shall be
2 a secretary of said territory, who shall reside therein and
3 hold his office for five years, unless sooner removed by the
4 President of the United States; he shall preserve and
5 record all the laws and proceedings of the legislative as-
6 sembly hereinafter constituted, and all the acts and pro-
7 ceedings of the governor in his executive department; he
8 shall transmit one copy of the laws and journals of the
9 legislative assembly, within thirty-days after the end of
10 each session, and one copy of the executive proceedings
11 and official correspondence, semi-annually, on the first days
12 of January and July in each year, to the President of the
13 United States, and two copies of the laws to the President
14 of the Senate and the Speaker of the House of Represen-
15 tatives, for the use of Congress. And in case of the death,
16 removal, resignation, or absence of the governor from the
17 territory, the secretary shall be, and he is hereby, authori-
18 zed and required to execute and perform all the powers and
19 duties of the governor during such vacancy or absence, or
20 until another governor shall be duly appointed and quali-
21 fied to fill such vacancy.

1 SEC. 4. *And be it further enacted,* That the legisla-
2 tive power and authority of said territory shall be vested
3 in a legislative assembly. The legislative assembly shall
4 consist of a council and house of representatives. The
5 council shall consist of nine members, having the qualifi-
6 cations of voters as hereinafter prescribed, whose term
7 of service shall continue three years. Immediately after
8 they shall be assembled under the first election, they shall
9 be divided as equally as may be into three classes. The
10 seats of the members of the first class shall be vacated at
11 the expiration of the first year, of the second class at the
12 expiration of the second year, and of the third class at the
13 expiration of the third year, so that one third may be
14 chosen every year. And if vacancies happen by resigna-
15 tion or otherwise, the same shall be filled at the next en-
16 suing election. The house of representatives shall, at its
17 first session, consist of eighteen members, possessing the
18 same qualifications as those prescribed for members of the
19 council, and whose term of service shall continue one
20 year. The number of representatives may be increased
21 by the legislative assembly, from time to time, in propor-
22 tion to the increase of qualified voters: *Provided,* That
23 the whole number shall never exceed thirty-six, apportion-
24 ment shall be made as nearly equal or practicable among
25 the several counties or districts for the election of mem-

bers of the council and representatives, giving to each section of the territory representation in the ratio of its qualified voters, as nearly as may be. And the members of the council and of the house of representatives shall reside in and be inhabitants of the district or county, or counties, for which they may be elected respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory, to be taken by such persons and in such mode as the governor shall designate ; and the persons so appointed shall receive a reasonable compensation therefor ; and the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend said election, and the returns thereof, as the governor shall appoint and direct ; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act ; and the governor shall, by his proclamation, give at least sixty days previous notice of such apportionment, and of the time, places, and manner of holding such election. The person having the highest number of legal votes in each of said council districts for members of the council shall be declared by the governor to be duly elected to the council ; and the per-

51 sons having the highest number of legal votes for the
 52 house of representatives shall be declared by the gov-
 53 ernor duly elected members of the said house: *Provided*,
 54 That in case two or more persons voted for shall have an
 55 equal number of votes, and in case a vacancy shall other-
 56 wise occur, in either branch of the legislative assembly,
 57 the governor shall order a new election. And the per-
 58 sons thus elected to the legislative assembly shall meet
 59 at such place, and on such day, within ninety days after
 60 such elections, as the governor shall appoint; but, there-
 61 after, the time, place, and manner of holding and conduct-
 62 ing all elections by the people, and the apportioning the
 63 representation in the several counties or districts, to the
 64 council and house of representatives, according to the
 65 number of qualified voters, shall be prescribed by law,
 66 as well as the day of the commencement of the regular
 67 sessions of the legislative assemblies: *Provided*, That no
 68 session in any one year shall exceed the term of sixty
 69 days, except the first session, which shall not be prolonged
 70 beyond one hundred days.

1 SEC. 5. *And be it further enacted*, That every free
 2 male citizen of the United States, above the age of twen-
 3 ty-one years, (Indians not taxed and Africans, and the des-
 4 cendants of Africans, excepted,) who shall have been an
 5 inhabitant of said territory at the time of its organization

6 shall be entitled to vote at the first election, and shall be
 7 eligible to any office within the said territory; but the
 8 qualifications of voters and of holding offices at all subse-
 9 quent elections, shall be such as shall be determined by the
 10 legislative assembly; *Provided*, That the right of suff-
 11 rage, and of holding office, shall be exercised only by
 12 citizens of the United States: *And provided, further*,
 13 That no officer, soldier, seaman, or marine, or other per-
 14 son in the army or navy of the United States, shall be
 15 allowed to vote in said territory by reason of being on
 16 service therein, unless said territory shall have been for the
 17 period of six months his permanent domicil: *Provided*,
 18 *further*, That no person belonging to the army or navy
 19 of the United States shall be elected to or hold any civil
 20 office or appointment in said territory.

1 SEC. 6. *And be it further enacted*, That the legis-
 2 lative power of the territory shall extend to all rightful
 3 subjects of legislation not inconsistent with the constitution
 4 and laws of the United States: but no law shall be passed
 5 interfering with the primary disposal of the soil; no tax
 6 shall be imposed upon the property of the United States,
 7 nor shall the lands or other property of non-residents be
 8 taxed higher than the lands or other property of residents.
 9 All the laws passed by the legislative assembly shall be
 10 submitted to the Congress of the United States, and if dis-

11 approved shall be null and of no effect: *Provided*, That
12 nothing in this act shall be construed to give power to
13 incorporate a bank, or any institution with banking pow-
14 ers, or to borrow money in the name of the territory, or
15 to pledge the faith of the people of the same for any loan
16 whatever, either directly or indirectly. No charter grant-
17 ing any privilege of making, issuing, or putting into cir-
18 culation any notes or bills in the likeness of bank notes,
19 or any bonds, scrip, drafts, bills of exchange or obliga-
20 tions, or granting any other banking powers or privileges,
21 shall be passed by the legislative assembly, nor shall the
22 establishment of any branch or agency, of any such cor-
23 poration derived from other authority, be allowed in said
24 territory; nor shall said legislative assembly authorize the
25 issue of any obligation, scrip, or evidence of debt by said
26 territory, in any mode or manner whatever, except certifi-
27 cates for services to said territory; and all such laws, or
28 any law or laws inconsistent with the provisions of this
29 act shall be utterly null and void. All taxes shall be equal
30 and uniform, and no distinction shall be made in the as-
31 sessments between different kinds of property, but the as-
32 sessments shall be according to the value thereof. To
33 avoid improper influences, which may result from inter-
34 mixing in one and the same act such things as have no

35 proper relation to each other, every law shall embrace but
 36 one object and that shall be expressed in the title.

1 *SEC. 7. And be it further enacted,* That all town-
 2 ship, district, and county officers, not herein otherwise
 3 provided for, shall be appointed or elected in such manner
 4 as shall be provided by the legislative assembly.

1 *SEC. 8. And be it further enacted,* That no member
 2 of the legislative assembly shall hold or be appointed to
 3 any office which shall have been created, or the salary or
 4 emoluments of which shall have been increased, while he
 5 shall have been a member, during the term for which he
 6 shall have been elected, or for one year thereafter; but this
 7 restriction shall not be applicable to members of the first
 8 legislative assembly; and no person holding a commission
 9 or appointment, under the United States, shall be a mem-
 10 ber of the legislative assembly, or shall hold any office
 11 under the government of the territory.

1 *SEC. 9. And be it further enacted,* That the judicial
 2 power of said territory shall be vested in a supreme court,
 3 district courts, probate courts, and justices of the peace.
 4 The supreme court shall consist of a chief justice and two
 5 associate justices, any two of whom shall constitute a
 6 quorum, and who shall hold a term of said court at the
 7 seat of government of said territory annually, and they

8 shall hold their offices during the period of four years, and
9 until their successors shall be appointed and qualified.
10 The said territory shall be divided into three judicial dis-
11 tricts, and a district court shall be held in each of said dis-
12 tricts by one of the justices of the supreme court, at such
13 times and places as may be prescribed by law; and the
14 said judges shall after their appointments, respectively,
15 reside in the districts which shall be assigned them. The
16 jurisdiction of the several courts therein provided for, both
17 appellate and original, and that of the probate courts and
18 justices of the peace, shall be as limited by law: *Pro-*
19 *vided*, That justices of the peace shall not have jurisdic-
20 tion of any case in which the title to land shall in anywise
21 come in question, or where the debt or damages claimed
22 shall exceed one hundred dollars; and the said supreme
23 and district courts, respectively, shall possess chancery as
24 well as common law jurisdiction. Each district court, or
25 the judge thereof, shall appoint its clerk, who shall also be
26 the register in chancery, and shall keep his office at the
27 place where the court may be held. Writs of error, bills
28 of exception and appeals, shall be allowed in all cases
29 from the final decisions of said district courts to the su-
30 preme court under such regulations as may be prescribed
31 by law, but in no case removed to the supreme court shall
32 trial by jury be allowed in said court. The supreme

33 court, or the justices thereof, shall appoint its own clerk,
34 and every clerk shall hold his office at the pleasure of the
35 court for which he shall have been appointed. Writs of
36 error and appeals from the final decisions of said supreme
37 court shall be allowed and may be taken to the Supreme
38 Court of the United States in the same manner and under
39 the same regulations as from the circuit courts of the
40 United States, where the value of the property or the
41 amount in controversy, to be ascertained by the oath or
42 affirmation of either party, or other competent witness,
43 shall exceed two thousand dollars, and in all cases where
44 the constitution of the United States or acts of Congress,
45 or a treaty of the United States is brought in question; and
46 each of the said district courts shall have and exercise the
47 same jurisdiction in all cases arising under the constitution
48 of the United States, and the laws of said territory, as is
49 vested in the circuit and district courts of the United
50 States. Writs of error and appeals, in all such cases,
51 shall be made to the supreme court of said territory, the
52 same as in other cases. The said clerk shall receive in
53 all such cases the same fees which the clerks of the dis-
54 trict courts of the Territory of Oregon receive for similar
55 services.

1 SEC. 10. *And be it further enacted,* That there shall
2 be appointed an attorney for said territory, who shall con-

3 tinue in office four years, and until his successor shall be
 4 appointed and qualified, unless sooner removed by the
 5 President, and who shall receive the same fees and salary as
 6 are provided by law for the attorney of the United States for
 7 the Territory of Oregon. There shall also be appointed
 8 a marshal for the said territory, who shall hold his office
 9 for four years and until his successor shall be appointed
 10 and qualified, unless sooner removed by the President,
 11 and who shall execute all processes issuing from the
 12 said courts, when exercising their jurisdiction as circuit
 13 and district courts of the United States; he shall per-
 14 form the duties, be subject to the same regulations and
 15 penalties, and be entitled to the same fees as are pro-
 16 vided by law for the marshal of the district courts of the
 17 United States for the Territory of Oregon.

1 SEC. 11. *And be it further enacted,* That the gov-
 2 ernor, secretary, judges, attorney, and marshal, shall be
 3 nominated, and by and with the advice and consent of the
 4 Senate, appointed by the President of the United States.
 5 The governor and secretary to be appointed as afore-
 6 said shall, before they act as such, respectively take an
 7 oath or affirmation, before the district judge or some jus-
 8 tice of the peace in the limits of said territory, or before
 9 some one of the judges of the Supreme Court of the United
 10 States, to support the constitution of the United States,

41 and faithfully to discharge the duties of their respective
12 offices ; which said oaths, when so taken, shall be certified
13 by the person by whom the same shall have been taken,
14 and such certificates shall be received and recorded by the
15 said secretary among the executive proceedings. And
16 the chief justice and associate justices, and all other civil
17 officers in said territory, before they act as such, shall take
18 a like oath or affirmation before the said governor or sec-
19 retary, or some judge or justice of the peace of the terri-
20 tory, who may be duly commissioned and qualified ; which
21 said oath or affirmation shall be certified and transmitted,
22 by the person taking the same, to the secretary, to be by
23 him recorded as aforesaid. The governor shall receive
24 an annual salary of fifteen hundred dollars as governor,
25 and fifteen hundred dollars as superintendent of Indian
26 affairs. The chief justice and associate justices shall each
27 receive an annual salary of two thousand dollars. The
28 secretary shall receive an annual salary of fifteen hundred
29 dollars. The said salaries shall be paid quarter-yearly,
30 from the dates of the respective appointments, at the
31 treasury of the United States ; but no such payment shall
32 be made until said officers shall have entered upon the
33 duties of their respective appointments. The members of
34 the legislative assembly shall be entitled to receive three
35 dollars each per day during their attendance at the session

36 thereof, and three dollars each for every twenty miles
37 travel in going to and returning from said sessions, esti-
38 mated according to the nearest usually travelled route.
39 A chief clerk, one assistant clerk, a sergeant-at-arms, and
40 doorkeeper, may be chosen for each house. The chief clerk
41 shall receive five dollars per day, and the said other
42 officers three dollars per day, during the session of the
43 legislative assembly ; but no other officers shall be paid
44 by the United States: *Provided*, That there shall be but
45 one session of the legislature, annually, unless, on an ex-
46 traordinary occasion, the governor shall think proper to
47 call the legislature together. There shall be appropriated
48 annually the sum of fifteen hundred dollars, to be ex-
49 pended by the governor, to defray the contingent expenses
50 of the territory, including the salary of a clerk of the ex-
51 ecutive department. And there shall also be appropriated
52 annually a sufficient sum, to be expended by the secretary
53 of the territory, and upon an estimate to be made by the
54 Secretary of the Treasury of the United States, to defray
55 the expenses of the legislative assembly, the printing of
56 the laws and other incidental expenses. And the governor
57 and secretary of the territory shall, in the disbursement of
58 all monies entrusted to them, be governed solely by the
59 instructions of the Secretary of the Treasury of the United
60 States, and shall semi-annually account to the said sec-

61 retary for the manner in which the aforesaid sum shall
62 have been expended ; and no expenditure, to be paid out
63 of money appropriated by Congress, shall be made by
64 said legislative assembly for objects not specially author-
65 ized by the acts of Congress making the appropriations,
66 nor beyond the sums thus appropriated for such objects.

1 SEC. 12. *And be it further enacted*, That the inhabi-
2 tants of said territory shall be entitled to enjoy all and sin-
3 gular the rights, privileges, and advantages granted and se-
4 cured to the people of the territory of the United States
5 northwest of the river Ohio, by the articles of compact con-
6 tained in the ordinance for the government of said territory,
7 on the thirteenth day of July, seventeen hundred and
8 eighty-seven, and shall be subject to all the conditions,
9 restrictions, and prohibitions in said articles of compact
10 imposed upon the people of said territory.

1 SEC. 13. *And be it further enacted*, That the legis-
2 lative assembly of the territory of Upper California shall
3 hold its first session at such time and place in said territory
4 as the governor thereof shall appoint and direct; and
5 at said first session, or as soon thereafter as they shall
6 deem expedient, the legislative assembly shall proceed to
7 locate and establish the seat of government for said terri-
8 tory at such place as they may deem eligible; which place,
9 however, shall thereafter be subject to be changed by the

10 legislative assembly. And the sum of five thousand
11 dollars, out of any money in the treasury not otherwise
12 appropriated, is hereby appropriated and granted to said
13 territory of Upper California, to be applied by the gov-
14 ernor to the erection of suitable buildings at the seat of
15 government.

1 SEC. 14. *And be it further enacted*, That a dele-
2 gate to the House of Representatives of the United States,
3 to serve for the term of two years, who shall be a citizen
4 of the United States, may be elected by the voters qual-
5 ified to elect members of the legislative assembly, who
6 shall be entitled to the same rights and privileges as have
7 been heretofore exercised and enjoyed by the delegates
8 from the several other territories of the United States
9 to the House of Representatives; but the delegate first
10 elected shall hold his seat only during the term of the
11 Congress to which he shall be elected. The first election
12 shall be held at such time and place, and be conducted in
13 such manner, as the governor shall appoint and direct; of
14 which, and the time, places, and manner of holding the
15 election, shall be prescribed by law. The person having
16 the greatest number of votes shall be declared by the gov-
17 ernor to be duly elected, and a certificate thereof shall be
18 given accordingly. The delegate from said territory shall
19 not be entitled to receive more than twenty-five hundred

dollars at any one session of Congress, as a compensation for his mileage, in going to and returning from the seat of government of the United States, any act of Congress to the contrary notwithstanding.

SEC. 15. *And be it further enacted*, That the legislative assembly of said territory shall provide for the appointment or election of such number of justices of the peace, constables, sheriffs, and other judicial and ministerial officers as they may deem necessary or expedient. Until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper.

SEC. 16. *And be it further enacted*, That all officers to be appointed by the President, by and with the advice and consent of the Senate, for the territory of Upper California, who, by virtue of the provisions of any law now existing, or which may hereafter be enacted, are required

6 to give security for any moneys which may be entrusted
 7 to them for disbursement, shall give such security at such
 8 time and place and in such manner as the Secretary of
 9 the Treasury may prescribe.

1 SEC. 17. *And be it further enacted*, That all the
 2 ports, harbors, shores, and waters of the main land of the
 3 territory aforesaid, shall constitute a collection district, to
 4 be called the district of Upper California, and a port of
 5 entry shall be established at _____, and a col-
 6 lector of customs shall be appointed by the President, by
 7 and with the advice and consent of the Senate, to reside
 8 at such port of entry. And the President of the United
 9 States is hereby authorized to establish such ports of de-
 10 livery in the district created by this act, not exceeding
 11 _____ in number, as he may deem expedient,
 12 and may appoint, by and with the advice and consent of
 13 the Senate, surveyors to reside thereat.

1 SEC. 18. *And be it further enacted*, That the collec-
 2 tor of said district shall be allowed a compensation of one
 3 thousand dollars per annum, and the fees allowed by law ;
 4 and the compensation to any surveyor, appointed in pur-
 5 suance of this act, shall not exceed five hundred dollars per
 6 annum, including in said amount the fees allowed by
 7 law ; and the amount collected by any of said surveyors,
 8 for fees in any one year, exceeding the sum of five hun-

9 dred dollars, shall be accounted for and paid into the trea-
10 sury of the United States. And the revenue laws of the
11 United States are hereby extended over the territory of
12 Upper California.